IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5851 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANILAL ALIAS MANIO ALIAS MANUBHAI MELABHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5851 of 2004

MS ABHA MAKWANA for MR RAMNANDAN SINGH for Petitioner

MR RC KODEKAR AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/09/2004

ORAL JUDGEMENT

1. The petitioner has been detained under the

provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated March 17, 2004, passed by the Commissioner of Police, Vadodara City, Vadodara, and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision of the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. The grounds of detention indicate that the detaining authority took into consideration four offences registered against the detenu and statements of 2 anonymous witnesses involving the petitioner in criminal offences. The authority found that the activities of the detenu are detrimental to public order. The authority therefore branded the petitioner as a bootlegger person as defined under the PASA Act. The authority considered the possibility of resorting to lesser drastic remedy under the ordinary law, but came to a conclusion that resorting to lesser drastic remedy under ordinary law may not serve the purpose and immediately preventing the petitioner from pursuing his activities whereas he is immediately required to be prevented from pursuing his activities and, therefore, detention under PASA is the only remedy available with the detaining authority that can be resorted to.

4. The petitioner in this petition under Article 226 of the Constitution of India challenges the order of detention on various grounds. However, learned advocate Ms. Abha Makwana for Mr. R.N.Singh for the petitioner has restricted her arguments to the fact that when the order was passed, the petitioner was in judicial custody and, therefore, the satisfaction recorded by the detaining authority for the need for immediate exercise of powers under Section 3 of the PASA Act cannot considered as genuine. She has pressed into service the decision of the Apex Court in the case of Amritlal and other v. Union Government through Secretary, Ministry of Finance and others reported in A.I.R. 2000 S.C. 3675. It is submitted that the petition therefore, may be allowed.

5. The petition is opposed to by learned A.P.P. Mr. R.C.Kodekar.

6. Having regard to the contentions raised before

this Court, a plain reading of grounds of detention indicate that the petitioner was in judicial custody when the order was passed. The authority, however, observed that he may obtain bail and on being released on bail may pursue his activities and, therefore, recorded a satisfaction for exercise of powers under Section 3. The Apex Court in the case of Amritlal and others (Supra) has observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail. The Apex Court observed that the inference must be drawn from the available material on record and must not be ipse dixit of the officer passing the order of detention. The Apex Court distinguished the likelihood of detenu moving an application for bail from the likelihood of being released on bail. In the instant case, as can be seen, there appears not anything to indicate that the petitioner had moved an application or any such order was passed. The inference that the petitioner while in custody may obtain bail is therefore, without any cogent material. The authority could not have drawn such an inference in absence of material. The satisfaction recorded by the authority for need of exercise of powers under Section 3 on this material therefore, vitiate the satisfaction and consequently the detention. The petition, therefore, deserves to be allowed.

7. The petition is allowed. The impugned order of detention dated 17-3-2004 passed against the detenu is quashed and set aside. The detenu, Manilal alias Manio alias Manubhai Melabhai Vasava is ordered to be set at liberty forthwith, if not required in connection with any other case. Rule is made absolute. D.S. permitted.

(R.P.Dholakia, J.)

*mithabhai